State of California
Energy Resources Conservation
and Development Commission

In the Matter of:	)	Docket No. 09-AFC-9
	)	
Application for Certification	)	**STAFF RESPONSE TO COMMISSION**
For the Ridgecrest Solar Energy Project	)	**QUESTIONS**
	)	
	)	

INTRODUCTION

On August 24, 2011, the full California Energy Commission (Energy Commission) took up the issue of whether Public Resources Code section 25502.3 allows non-jurisdictional power plants, including solar photovoltaic facilities, to "opt-in" for Energy Commission jurisdiction and a Energy Commission license. The Energy Commission ordered parties to respond to six questions and provided an opportunity for parties to file additional briefs due by September 16, 2011. The following contains, first, points not previously covered in Staff's initial brief and, second, Staff's responses to the Energy Commission's six questions.

I.
UNDER SECTION 25502.3, FACILITIES THAT ARE "EXCLUDED" FROM CHAPTER 6 OF THE WARREN-ALQUIST ACT INCLUDE ONLY THOSE FACILITIES THAT ARE EXCLUDED BY OPERATION OF PUBLIC RESOURCES CODE SECTION 25501.

A. To Waive the Exclusion under Section 25502.3 is to Surrender Voluntarily a Right.

The statutory rules of interpretation first require discerning legislative intent by relying on the plain meaning or definition of the words of the statute under interpretation. (*Kaiser Found. Health Plan, Inc. v. Zingale*, (2008) 99 Cal. App. 4th 1018, 1023, *Smith v. Superior Court* (2006) 39 Cal.4th 77.) The term, "waive," is defined as a verb meaning "to abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily." (Black's Law Dictionary, Seventh Edition, 1999.) "Waiver" is defined as, "The voluntary relinquishment or abandonment—express or implied—of a legal right or advantage." (*Ibid*.)

The important point here is that a waiver is a voluntary surrender of a right or claim, in other words, an entitlement of some sort. In the context of section 25502.3, the right, claim, or entitlement is the exclusion from Chapter 6 that applied to otherwise jurisdictional projects meeting certain criteria. That right of exclusion from the chapter that governs site certification is what section 25502.3 allows qualifying project proponents to waive.

B. The Warren-Alquist Act does not Confer Any Jurisdictional Right to a Proponent of a Nonjurisdictional Project.

For a right to be created or conferred, there must be statutory language creating and conferring the right. (*Sec. Nat. Guar., Inc. v. California Coastal Comm'n*, (2008) 159 Cal. App. 4th 402, 419.) There is no evidence of legislative intent that proponents of nonjurisdictional projects receive any "right" under the Warren-Alquist Act that may be waived under Public Resources sections 25501.7 or 25502.3.

A project that is outside the scope of the Energy Commission's jurisdiction does not automatically or thereby receive a "right." Such a project is simply not subject to the Energy Commission's siting jurisdiction. Grandfathered projects, on the other hand, would be subject to the Energy Commission's jurisdiction, but for their "right" to be excluded under section 25501. Grandfathered projects are the only projects intended by the legislature to receive a "right" of exclusion and the option to waive it.

C. Section 25501 is the Only Provision that Confers A Right that May be Waived under Section 25502.3.

Section 25502.3, the waiver provision that is the subject of Applicant's Motion, reads:

> Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

A key clause in section 25502.3 is the one that refers to, "any person proposing to construct a *facility excluded from the provisions of this chapter* …." Staff submits that the only facilities under section 25502.3 "excluded from the provisions of this chapter" (Chapter 6 of the Warren-Alquist Act on "Power Facility and Site Certification") are those that are excluded by operation of section 25501. Section 25501 originally began by stating, "The provisions of this chapter do not apply to any site and related facility which meets either of the following requirements …." Currently, section 25501 begins with, "This chapter does not apply to any site or related facility for which …." In either case,

the statutory exclusion applies to a “site” and/or related “facility.” Given the definitions of those terms by sections 25110, 25119, and 25120, the legislative intent in section 25501 is to consider only those projects meeting the definitions of those terms and the criteria of section 25501 as being “excluded from the provisions of this chapter.”

Section 25501 is the only section that statutorily excludes facilities from the provisions of Chapter 6. Section 25501 evidences legislative intent that only a discrete group of otherwise jurisdictional projects (i.e. “a facility”) are intended to be “excluded from the provisions of this chapter.” Nothing in the original or current wording of the Warren-Alquist Act shows any intent to extend the option to waive the statutorily granted exclusion to anything other than a “site” and related “facility” as those terms are defined in the Act and that meet the criteria of section 25501.

It is in the context of the original definitions of “site,” “facility,” and “thermal powerplant” that the waiver provisions must be read, because that is the context in which the waiver provisions first appeared. Absent from the original definition of “thermal powerplant” is the so-called ambiguity that Applicant claims is in the declaratory statement added in 1988 that declares, the term “does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.” Clearly and by its express terms, the legislative intent is that “facility” refers either to an “electric transmission line,” which is defined by section 25107, or a “thermal powerplant,” which is defined by section 25120.

In the context of section 25120, as indicated in the legislative history (SB 928 Senate Committee on Energy and Public Utilities, Department of Finance SB 928 bill analysis, SB 928 Consent Calendar Senate Third Reading, Rosenthal Floor Statement on SB 928, Aug 1, 1988 letter from Charles Imbrecht to Assemblyman Vasconcellos. Attached as Exhibit H.), the addition of the 1988 declaratory statement shows legislative intent to be clear that a “thermal powerplant” and, therefore, a “facility” “ does not include any wind, hydroelectric, or photovoltaic electrical generating facility.” The legislative intent of this declaratory statement further underscores the limited nature of the statutory exclusion that may be waived. The Act’s waiver provisions are not intended for “wind, hydroelectric, or photovoltaic electrical generating facility”, or any other “nonjurisdictional” project. Such projects include neither a “site” nor “facility” as those terms are defined by the Act and have, therefore, not been excluded from the provisions of Chapter 6 under section 25501. They simply lie outside the Energy Commission’s jurisdiction by being outside the definition under section 25120.

In sum, sections 25501 and 25502.3 must be read in the context in which they were enacted, with the legislative purpose (“grandfathering”) in mind, and with respect for the defined terms (“facility”) used in those provisions. The provisions were intended to allow “pipeline” projects “excluded” by sections 25501 and 25501.5 to “opt-in” to the Energy Commission’s licensing process. They have no other purpose.

II.
SECTION 25500 DOES NOT AUTHORIZE THE ENERGY ENERGY COMMISSION TO HAVE A FLEXIBLE JURISDICTION RANDOMLY DETERMINED BY PROJECT PROPONENTS.

Fundamentally, agencies must have their jurisdictions defined and specified. (See *Sec. Nat. Guar., Inc. v. California Coastal Comm'n*, (2008)159 Cal. App. 4th 402, 419 *Louisiana Public Service Comm'n v. FCC* (1986) 476 U.S. 355, 374.) The Warren Alquist Act sets forth the Energy Commission's licensing jurisdiction limiting it to electric transmission lines and thermal power plants 50 MW or larger.

There are important legal and public policy reasons for having clearly defined jurisdictional boundaries. Advocates for a "flexible" jurisdiction suggest that project proponents should be able to determine whether the Energy Commission has jurisdiction, expanding it simply by filing a "notice of intent" (NOI) application.[1] Such a notion is legally questionable, as it leaves jurisdictional limits ill-defined, inconsistent, unpredictable, and subject to constant change.

Under such notions of "flexible" jurisdiction, it becomes entirely unclear what kinds of projects could ignore local permitting and file for a Energy Commission license instead. Wind projects, hydro projects, photovoltaic (PV) projects, tidal wave projects—all such projects might reasonably be considered subject to an open-ended "opt-in" provision. Moreover, since the "opt-in" provision advocated is so unlimited, it could pertain to projects of any size, presumably even less than one megawatt. If a housing developer of a "solar subdivision" with a large PV component was to file an NOI pursuant to section 25502.3, would the Energy Commission feel compelled to process it? On what basis could it reject such an application if section 25502.3 allows flexible "opt-in" for jurisdiction? If a refinery addition adds a PV or cogeneration component, is the refinery modification to be licensed by this Energy Commission, rather than by local government and air districts? On what basis could the Energy Commission deny an application for an NOI based on section 25502.3?

The possibility for jurisdictional confusion and conflict are enormous when jurisdiction is not determined by statute, but rather by project proponents. Developers of a wide range of projects, presumably with some energy component, would be encouraged to "agency shop" to determine whether it is better to seek a local conditional use permit rather than a Energy Commission license. This undermines regulatory predictability and certainty. "Opting in" to Energy Commission review means opting out from local

[1] This contention is further undermined by the fact that the NOI is a statutory atavism no longer required for any of the projects the Commission commonly licenses today. (See Pub. Resources Code, § 25540.6.) The Commission has not processed an NOI for more than 20 years.

review of projects that have traditionally been within the jurisdiction of local governments. It could lead to litigation and uncertainty over the validity of permits issued by the Energy Commission for "nonjurisdictional" projects that do not meet the definition of "facility."

A departure from the Energy Commission's statutorily defined jurisdictional boundaries should be based on a showing of legislative intent regarding the provision in question. Yet the legislative history discloses no such intent, no mention of such an absence of boundaries. No committee report or bill analysis supports such intent. And no applicant to the Energy Commission, in more than 35 years, has ever sought to apply for an NOI to "opt-in" for projects that are not "facilities" (i.e., either a "thermal power plant" or a transmission line).

If the legislature intended the Energy Commission to analyze non-thermal powerplants through some type of voluntary mechanism, the legislature could have written such authority in the original Act or in a subsequent amendment. To the contrary, the legislature seemed to communicate a clear position regarding the limits of Energy Commission jurisdiction in the 1988 amendments to the Act. (See attached Exhibit H.)[2]

STAFF'S RESPONSE TO SPECIFIC ENERGY COMMISSION QUESTIONS

1. **What is the legislative purpose of Section 25502.3?**
2. **What is the legislative purpose of Section 25501.7?**

Sections 25502.3 and 25501.7 have the same basic legislative purpose. The Legislature intended both sections to provide alternative ways for applicants to waive the exclusion from Chapter 6 that section 25501 grants to certain sites and facilities that would otherwise be subject to the Energy Commission's jurisdiction. Currently the grandfathering provision and therefore the waiver provisions have limited or no applicability and are historic artifacts or surplusage. (Please see our responses to questions 5 and 6 below that address the legislative history of these sections.)

3. **What does the term "facility" in section 25502.3 refer to? Are there any electrical generating facilities of any size or technology that would not be included in this definition?**

The term "facility" as used in section 25502.3 is defined in section 25110 to mean "any electric transmission line or thermal powerplant, or both …, regulated according to the

[2] Section 25120 states that "thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.

provisions of this division." (Pub. Resources Code § 25110.) "Electric transmission line" is defined by section 25107. "Thermal powerplant" is defined at section 25120 to mean "any stationary … electrical generating facility using any source of thermal energy, with a generating capacity of 50 MW or more …. 'Thermal powerplant' does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility." (Pub. Resources Code § 25120.)

These terms have an important role in determining the Energy Commission's siting jurisdiction over power plants, among other structures. Section 25500 grants the Energy Commission:

> exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. … After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

(Pub. Resources Code § 25500.) Thus, section 25500, together with the definitions in sections 25107, 25110, and 25120, serve to establish the Energy Commission's siting jurisdiction over a "facility," that is, an "electric transmission line" as defined in section 25107 and a "thermal powerplant" with a generating capacity of 50 MW or more. The term "facility" in section 25502.3, in the absence of wording to the contrary, has the same meaning as the term "facility" in section 25500 and the relevant definitions.

Section 25100 states, "Unless the context otherwise requires, the definitions in this chapter govern the construction of this division." In the context of "jurisdiction," the definitions should apply. There is nothing in the wording of section 25502.3 that requires a different meaning of a statutorily defined term.

Any electrical generating facility that is not thermal such as wind, hydro, PV or thermal powerplants under 50 MW would not be included in the definition.

4. **What facilities referred to in section 25502.3 would not be eligible for an exemption under section 25501.7?**

All facilities referred to in section 25502.3 would be eligible for an exemption under section 25501.7. Section 25502.3 provides in pertinent part: "Except as provided in section 25507.1, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the Energy Commission a notice of intention …." (Pub. Resources Code § 25502.3.) Section

25501.7 provides a waiver to "a facility or a site to which Section 25501 applies …." Section 25501 grandfathers certain sites or facilities if they have a certificate of public convenience and necessity (CPCN) from the Public Utilities Commission or they received municipal utility approval before January 7, 1975. (Pub. Resources Code § 25501.) Because facilities are excluded from the chapter only by section 25501 and because the term "facility" is defined by statute and used without distinction under both waiver provisions, an excluded facility could take advantage of either waiver provision.

5. **If you conclude that sections 25501.7 and 25502.3 are both intended to apply only to the facilities identified in section 25501, why were two statutes adopted instead of a single statute?**

Available legislative history does not conclusively explain the reason there are two separate sections that provide alternative "opt-in" provisions that waive the exclusion under section 25501. It is helpful, however, to understand the historic context of the provisions and the original statutory scheme in which they first appeared in the Warren-Alquist Act.

When it enacted the Warren Alquist Act in 1974, the Legislature was significantly concerned about the grandfathering of projects that were "in the pipeline" for approval or construction. This concern was particularly strong because the new siting process set forth in the Act required a two-stage process (the NOI and AFC), each 18 months in duration, making it likely that no project would be licensed by the Energy Commission for more than three years from enactment of the legislation. Electricity growth during this time was perceived to be very strong, and "pipeline" projects were essential to meet demand and keep the lights on. Accordingly, the Act contained section 25501, which grandfathered "any site or related facility" meeting certain criteria, and related provisions that elaborated on the group of excluded projects. Given the Act's use of the terms "site" and "facility" in Section 25501 and related provisions and the Act's definitions of these terms, excluded or grandfathered projects were certain thermal powerplant projects 50 MW or greater that would otherwise be subject to Energy Commission's jurisdiction. (See sections 25501, 25501.3, and 25501.5, AB 1575 enacted in 1974 pp. 26-30 attached as Exhibit A, See also Exhibits B and G, comments by the Act's authors.) Original sections 25501, 25501.3, and 25501.5 all provided the criteria for power plants to be exempt from the Act's requirements in Chapter 6. In fact, former section 25501.5 provided a lengthy list of projects specifically excluded from the provisions of Chapter 6.

Both sections 25501.7 and 25502.3 provided waivers to facilities that met the criteria of section 25501. Originally, either they had to have received a certificate of public convenience and necessity (CPCN) from the Public Utilities Commission as of the

effective date of the division or they had to show construction was planned to begin within three years from the effective date of the division. (Exhibit A pp. 30-31) The criterion based originally on construction plans is now replaced by a criterion requiring approval by a municipal utility before January 7, 1975. (Pub. Resources Code § 25501.) Section 25501.7 provides a general waiver, and was most appropriate for projects with an approved site (such as a project with a CPCN from the Public Utilities Commission Act) or a site that was excused by former section 25502.5 from having to file at least three alternative sites in an NOI. Section 25502.3, (allowing a waiver by filing an NOI) was most appropriate for projects without decided or approved sites.

It is not clear from the legislative history why, during the evolution of the bill that became the Act, two provisions for "excluded" projects were needed to provide an "opt-in" to Energy Commission jurisdiction. However, many (but not all) of the projects that were "excluded" from Chapter 6 provisions already had determined "sites,"—locations that had been chosen, often with prepared studies or even a certificate of public and convenience and necessity (CPCN) issued by the California Public Utilities Commission. Such projects would presumably not want to or need to go through the site selection process entailed by the standard notice of intent (NOI) provisions; they could therefore choose to seek a Energy Commission license for their facility by filing a notice of waiver under section 25501.7 and skipping the standard NOI process requiring at least three alternative sites. However, not all grandfathered projects had predetermined sites or CPCNs. Such projects would be subject to the normal NOI process and could file an NOI using the "opt-in" mechanism under section 25502.3. As explained in the response to question 4, though, any excluded site or facility could "opt in" by filing either a notice of waiver under section 25501.7 or an NOI under section 25502.3.

In addition to historical context, there are differences in the wording of the two sections that may help explain their different approaches to a waiver. Section 25502.3 offers a waiver to "any person proposing to construct a facility" that is excluded from the chapter. There is no mention of "site" as there is in section 25501.7. The significance of this may be subtle, but a plausible explanation may relate to an NOI. A person obtains a waiver under section 25502.3 by filing an NOI, which requires at least three alternative sites and approval of at least two. (Pub. Resources Code §§ 25502.3, 25503, and 25516.) The requirement for a full blown NOI comports with a proposal for a "facility" that may lack a decided site and could benefit from a review of at least three alternative sites.

Section 25501.7 offers a waiver to "[a]ny person proposing to construct a facility or a site" that is excluded from the chapter. Here, reference is to "site" as well as "facility." A person obtains a waiver under section 25501.7 by filing a notice of waiver, a simple exercise compared with filing an NOI under Section 25502.3. If a person wanting to waive an excluded project already has a "site" with a CPCN, for example, Section

25501.7 allows for a simple notice to that effect. In any event, construction of a "facility" that is waived under either section 25501.7 or 25502.3 is subject to "any and all of the provisions of this chapter." (Pub. Resources Code §§ 25501.7 and 25502.3.)

While section 25501 played an important role during the transition to Energy Commission licensing authority, the waiver provisions were little used. Today, sections 25501, 25501.7 and 25502.3 are remnants from the early days of the Act. It may be possible to conceive a scenario in which a project with a CPCN was never built and the project's applicant now desires to proceed through the Energy Commission's licensing process but this is unlikely and we lack evidence of this being a possibility.

The general rule of statutory construction courts follow is to interpret a statute *where possible* to avoid surplus language. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22, 56 Cal.Rptr.2d 706, 923 P.2d 1.) "But the avoidance of surplusage, while an important principle of statutory construction, is nonetheless subordinate to the overriding purpose of effectuating legislative intent." (*Malovec v. Hamrell*, (1999) 70 Cal. App. 4th 434, 443.) Rules such as those directing courts to avoid interpreting legislative enactments as surplusage are mere guides and will not be used to defeat legislative intent. (*In re J.W*., (2002) 29 Cal. 4th 200, 209) The fundamental goal of statutory interpretation is to ascertain and carry out the intent of the Legislature. (*People v. Townsend* (1998) 62 Cal.App.4th 1390, 1399, 73 Cal.Rptr.2d 438.) The interpretation should be practical, not technical, and should result in wise policy rather than mischief or absurdity. (*Valley Vista Services, Inc. v. City of Monterey Park*, (2004) 118 Cal. App. 4th 881, 888.)

In this case time has diminished the relevance of the grandfathering and waiver provisions, but that does not mean the waiver provisions can be redefined outside of legislative intent in an attempt to add relevance and purpose, especially when changing the meaning of the provisions sidesteps relevant statutory definitions and changes something as fundamental as agency jurisdiction.

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6. **Discuss the significance of the legislative history of relevant provisions and amendments to the warren-alquist act, including but not necessarily limited to sections 25120, 25501.7, 25502, 25502.3, 25540 , and 25542, and whether the language and timing of those provisions and amendments supports the applicant's assertion that section 25502.3 permits it to opt-in to the energy commission's exclusive certification jurisdiction by filing a notice of intention to file an application for certification of a solar photovoltaic electrical generating facility.**

Three lines of evidence from legislative history indicate that both waiver provisions apply only to grandfathered projects, those exempted from Chapter 6 by section 25501 that would otherwise be subject to the Energy Commission's permitting jurisdiction. These projects included the listed projects under former section 25501.5. There is no legislative history that suggests section 25502.3 is an open-ended waiver for nonjurisdictional projects.

First, former section 25501.5 (as originally enacted in 1974, Exhibit A, p.27) includes reference to these two alternative waiver provisions, indicating that either could apply at an applicant's option to the long list of "sites and facilities" that were exempted by that section. (Exhibit A p. 30) The reference to sections 25501.7 and 25502.3 in the last sentence of section 25501.5 indicates that either waiver provision was applicable to a "site," as defined in section 25119, or "facility," as:

> *"The inclusion of any site and related facility in this section means that the provisions of this chapter do not apply to any such site or facility, to the extent that Section 25501.7 or 25502.3 is made applicable, and that such site and related facility is subject to any and all other provisions of law."* (Section 25501.5, Exhibit A p.30.)

Second, these "two alternative methods" of voluntarily submitting to the Energy Commission's siting jurisdiction were recognized and discussed by the Attorney General in a formal opinion on the grandfathering provision in 1975 (58 Ops. Atty. Gen. 729, 736. See Exhibit C pp. 736-737.).

> [T]he next issue is to determine the circumstance under which PG&E could waive the exemption, absent any legislative action to revoke it. First of all, the Energy Act itself provides *two alternative methods for waiving the exemption*. One can either submit a notice of waiver to the Energy Commission…section 25501.7, or one can submit to the Energy Commission a notice of intent to file an application

> for certification… section 25502.3. In either case the exemption is waived …. (Exhibit C Opinion excerpts p.736: emphasis added.)

Finally, the May 13, 1974 letter from the Office of Legislative Counsel supports the contention that both waiver provisions apply to the grandfathered thermal power plants. (Exhibit D.) The Legislative Counsel notes that:

> In addition to the exclusions pursuant to 25501, 25501.3 and 25501.5, the commission is authorized to exempt thermal power plants with a generating capacity of up to 100 megawatts if it makes certain findings (Sec. 25541)…[H]owever, we observe that any person proposing to construct a facility which is excluded or exempted may waive, as prescribed, the exclusion or exemption of such site and related facility from the power facility and site certification provisions; and, if so any and all of such provisions would apply to the construction of such facility (Secs. 25501.7, 25502.3). (Exhibit D p6.)

The statement identifies the original grandfathering provisions, sections 25501, 25501.3, and 25501.5. The statement then identifies the two waiver provisions, sections 25501.7 and 25502.3, which apply to the grandfathering provisions.

A closer look at the evolution of the grandfathering and waiver provisions may shed some light on how these sections relate and why there were separated. From February 19, 1974 to April 4, 1974 the Act was amended three times. In the March 28, 1974 version two grandfather provisions were included: (See Exhibit E.)

Section 25501 in the March 28, 1974 version contained language regarding facilities that were grandfathered in because they a) had a CPCN or b) had filed an application for a CPCN and were planning to commence construction within three years.

Section 25501.3 in the March 28, 1974 version grandfathered in projects that did not require a CPCN but which planned to commence construction within three years.

Section 25501.5 in the March 28, 1974 version did not contain a list of projects deemed by the legislature to meet the three-year exemption as it eventually would. (section 25501.5 March 28, 1974 version p.28. Attached as Exhibit E.) Rather, the bill set up a dual process in which both the Public Utilities Commission and the Energy Commission would play a role in licensing a grandfathered project that required a CPCN but did not yet have one.

Immediately following this dual review provision came section 25502. (March 28, 1974 version, attached as Exhibit E.) Section 25502 required applicants seeking to waive an exclusion for a proposed thermal powerplant to submit to the Energy Commission a

notice of intention to file an application for the certification of such facility. The last sentence of 25502 in the March 28, 1974 amendment was the precursor to section 25502.3. (Exhibit E p. 29.)

> Any person proposing to construct a facility excluded from the provisions of this division may waive such exclusion by submitting to the Commission a notice of intention to file an application for certification and any and all of the provisions of this chapter shall apply to the construction of such facility.

While there is no direct legislative discussion on the addition of this first waiver provision, it appears that the legislature wanted to provide a mechanism for any of the grandfathered thermal projects to come before the Energy Commission and take advantage of the Energy Commission's one-stop, or exclusive, permitting process. The waiver language as part of the first NOI provision, section 25502, indicated an applicant seeking a waiver would be subject to the NOI process.

In the April 4, 1974 version of the Act, the list of exempted projects in section 25501.5 was added and the dual review by the PUC and the Energy Commission was eliminated. (Exhibit F pp. 26-32.) The first waiver provision included in section 25502 was moved into its own subsection, 25502.3, and the second waiver provision, 25501.7, appeared with the addition of section 25502.5, which exempted three grandfathered sites from the NOI requirement of filing three alternative sites. It appears that the legislature recognized that some projects with dedicated sites and CPCNs or with sites exempted from the standard NOI requirements could benefit from a simple waiver mechanism and, thus, included section 25501.7. Added to alternative waiver section 25502.3 is the phrase, "except as provided in section 25501.7…" This clause indicates that, except for the alternative notice of waiver, an applicant may also waive the exemption from Chapter 6 by submitting an NOI. Though the alternative waiver mechanisms appear to be related to certain criteria (having a CPCN, for example,) or an exemption from standard NOI requirements (per section 25502.5), applicants could nevertheless choose either mechanism to waive their exclusions granted by section 25501.

Section 25501 still exists to exempt from the Energy Commission's siting jurisdiction any site or facility that meets the criteria in section 25501. The section coexists with both waiver provisions regardless of the likelihood that either will be utilized. Sections 25501, 25507.1, and 25502.3 are all reasonably attributable to outdated historical provisions.

Section 25542 states:

> *In the case of any site and related facility or facilities for which the provisions of this division do not apply, the exclusive power given to the commission pursuant to Section 25500 to certify sites and related facilities shall not be in effect.*

This section acknowledges that thermal projects excluded from the division would not fall under the Energy Commission's jurisdiction. The May 13, 1974 letter from the Office of Legislative Counsel notes that the "facilities listed in 25501.5 would be excluded from the power facility and site certification provisions of AB 1575 and the authority of local government…would not be superseded." Section 25542 is cited as support for this statement. (Exhibit D p.6.) Section 25542 establishes that the Energy Commission would not have siting authority over the grandfathered projects as well as those projects the Energy Commission itself could exempt such as small power plants under section 25541 and geothermal under section 25540.5.

The legislature has demonstrated clarity when exempting projects from either Energy Commission jurisdiction or specific provisions of the Act. The exemption from the need to file an NOI is a good example. Sections 25540.6 (regarding a variety of projects) and 25540 (regarding geothermal projects) have exempted many types of thermal powerplants from the NOI requirement. If the Legislature intended the Energy Commission to have jurisdiction over non-thermal projects at the discretion of project proponents, one would expect an equally clear enunciation of that intent. None exists.

There is nothing in the legislative history to evidence projects outside the jurisdiction of the Energy Commission and the scope of the Act could be subject to Energy Commission jurisdiction because an applicant wants to "opt in." To the contrary, considerable discussion exists evidencing the Energy Commission's lack of jurisdiction over non-thermal projects like PV. (SB 928 Senate Committee on Energy and Public Utilities, Department of Finance SB 928 bill analysis, SB 928 Consent Calendar Senate Third Reading, Rosenthal Floor Statement on SB 928, Aug 1, 1988 letter from Charles Imbrecht to Assemblyman Vasconcellos. Attached as Exhibit H.)

The legislative history surrounding SB 928 seems to be dispositive as to the issue of voluntary jurisdiction over non-thermal technology. During the 1988 amendments under SB 928, the definition of "thermal powerplant", section 25120, was modified to include a sentence that PV, wind and hydro powered facilities are not thermal powerplants. During the amendment process there was robust discussion in the legislative record noting that the language changes clarify existing law. (SB 928 Senate Committee on Energy and Public Utilities, Department of Finance SB 928 bill analysis, SB 928 Consent Calendar Senate Third Reading, Rosenthal Floor Statement on SB 928,

Aug 1, 1988 letter from Charles Imbrecht to Assemblyman Vasconcellos. Attached as Exhibit H.) The declaratory statement and the intent to assure wind and PV developers that they would not be subject to Energy Commission jurisdiction indicates the absence of any expanded jurisdiction, even at a proponent's request. The legislative history is completely silent on this because such an option was never intended by the Legislature.

CONCLUSION

The interpretation of section 25502.3 urged on the Energy Commission finds no support in the legislative history. It would convert legislative provisions from the original statute, pertinent to grandfathering of 1974 pipeline projects, into new licensing authority for the Energy Commission that was never intended by the Legislature. This new authority would be one defined not by the Energy Commission, but by the various project proponents who might elect the Energy Commission's forum for projects that would otherwise be permitted by local governments. Staff recommends that the Energy Commission reject the proposed interpretation of section 25502.3.

Dated: September 16, 2011

Respectfully submitted,

/S/
JARED J. BABULA
Senior Staff Counsel

Exhibit A

Assembly Bill No. 1575

Passed the Assembly May 16, 1974

Chief Clerk of the Assembly

Passed the Senate May 14, 1974

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 1974, at _____ o'clock ___ M.

Private Secretary of the Governor

SEC. 2. Division 15 (commencing with Section 25000) is added to the Public Resources Code, to read:

DIVISION 15. ENERGY CONSERVATION AND DEVELOPMENT

CHAPTER 1. TITLE AND GENERAL PROVISIONS

25000. This division shall be known and may be cited as the Warren-Alquist State Energy Resources Conservation and Development Act.

25001. The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.

25002. The Legislature further finds and declares that the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality.

25003. The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered.

25004. The Legislature further finds and declares that there is a pressing need to accelerate research and development into alternative sources of energy and into improved technology of design and siting of power facilities.

25005. The Legislature further finds and declares that prevention of delays and interruptions in the orderly provision of electrical energy, protection of

included in all environmental impact reports required on local projects as specified in Section 21151.

25405. A city, county, or city and county may by ordinance or resolution prescribe a schedule of fees sufficient to pay the costs incurred in the enforcement of standards adopted pursuant to this chapter.

CHAPTER 6. POWER FACILITY AND SITE CERTIFICATION

25500. In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, except for any site and related facility proposed to be located in the permit area, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

25500.5. The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

25501. The provisions of this chapter do not apply to any site and related facility which meets either of the following requirements:

(a) For which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division.

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(b) For which construction is planned to commence within three years from the effective date of this division.

25501.3. A proposed site and related facility shall be deemed to be one for which construction is planned to commence within three years from the effective date of this division within the meaning of subdivision (b) of Section 25501, if all of the following are satisfied:

(a) The planned operating date and the planned capacity are consistent with the forecast of electric loads either set forth in a report submitted under Sections 2 and 3 of General Order 131 of the Public Utilities Commission as of March 31, 1974, or otherwise disclosed in a report of a public agency as of March 31, 1974.

(b) The need to commence construction within three years from the effective date of this division is reasonably related to the planned operating date of such site and related facility.

(c) Substantial funds have been expended or committed for planning, site investigations, site acquisition, or equipment procurement for such site and related facility prior to the effective date of this division.

25501.5. The Legislature finds and declares that the following proposed sites and facilities with the associated estimated generating capacities meet the requirements of subdivision (b) of Section 25501:

(a) As designated in the report of the Pacific Gas and Electric Company submitted to the Public Utilities Commission on March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, three gas turbine powerplants, each having a generating capacity of 52 megawatts, commonly known as Potrero Unit 4, Potrero Unit 5 and Potrero Unit 6, to be located in the City and County of San Francisco; a gas turbine powerplant having a generating capacity of 52 megawatts, commonly known as Hunters Point Unit 1, to be located in the City and County of San Francisco; a gas turbine powerplant having a generating capacity of 200 megawatts, commonly known as Station C; a geothermal powerplant having a generating capacity of 106 megawatts, commonly known as Geysers Unit 12, to be located in Sonoma County; a geothermal powerplant

having a generating capacity of 110 megawatts, commonly known as Geysers Unit 14, to be located in Sonoma County; a geothermal powerplant having a generating capacity of 55 megawatts, commonly known as Geysers Unit 15, to be located in Sonoma County; a geothermal powerplant having a generating capacity of 135 megawatts, commonly known as Geysers Unit 13, to be located in Lake County; a geothermal powerplant having a generating capacity of 110 megawatts, planned for operation in 1978, to be located in Sonoma County or Lake County; a geothermal powerplant having a generating capacity of 110 megawatts, planned for operation in 1979, to be located in Sonoma County or Lake County; a combined-cycle powerplant having a generating capacity of 800 megawatts, commonly known as Thermal 78, to be located in Contra Costa County near the City of Pittsburg; two combined-cycle powerplants, each having a generating capacity of 800 megawatts, commonly known as Thermal 79 and Thermal 81, to be located in Contra Costa County or Solano County; and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Nuclear A to be located in Region 1, as shown on page 27 of the report of the Pacific Gas and Electric Company submitted March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, or at the location commonly known as Diablo Canyon in San Luis Obispo County.

(b) As described in the report of the Southern California Edison Company submitted to the Public Utilities Commission on March 8, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two combined-cycle powerplants, each with a generating capacity of 236 megawatts, commonly known as Cool Water Unit 3 and Cool Water Unit 4, to be located in San Bernardino County; six combined-cycle powerplants, each having a generating capacity of 236 megawatts, commonly known as Huntington Beach Unit 6, Huntington Beach Unit 7, Huntington Beach Unit 8, Huntington Beach Unit 9, Huntington Beach Unit 10 and Huntington Beach Unit 11, to be located

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11, to be located in the City of Huntington Beach; three combined-cycle powerplants, each with a generating capacity of 414 megawatts, commonly known as Lucerne Valley Unit 1, Lucerne Valley Unit 2 and Lucerne Valley Unit 3, to be located in San Bernardino County; and two nuclear powerplants, each having a generating capacity of 760 megawatts, commonly known as the Desert Nuclear Project.

(c) As described in the report of the San Diego Gas and Electric Company submitted to the Public Utilities Commission on March 22, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two gas turbine powerplants, each having a generating capacity of 64 megawatts, commonly known as South Bay Gas Turbine Unit 3 and South Bay Gas Turbine Unit 4, to be located in San Diego County; a fossil-fueled powerplant having a generating capacity of 292 megawatts, commonly known as Encina Unit 5, to be located in San Diego County; a combined-cycle powerplant having a generating capacity of 404 megawatts, planned for operation in 1979, to be located in San Diego County; and a nuclear powerplant having a generating capacity of 1,200 megawatts, commonly known as the Desert Nuclear Project, to be located in Riverside County.

(d) As described in the report of the Pacific Gas and Electric Company to the Public Utilities Commission submitted March 1, 1974, in response to Sections 2 and 3 of the General Order 131 of the Public Utilities Commission, a gas turbine powerplant having a generating capacity of 150 megawatts, commonly known as SMUD Gas Turbines, to be located in Sacramento County; and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Rancho Seco Unit 2, to be located in Sacramento County.

(e) As described in the report of the Department of Water and Power of the City of Los Angeles submitted to the Public Utilities Commission on March 18, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, a nuclear powerplant having a generating capacity of 1,300 megawatts, commonly

known as the San Joaquin Nuclear Project to be located in Kern County near the City of Wasco.

(f) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and to be located in Imperial County.

(g) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and located in Inyo County.

(h) Two geothermal powerplants, each having a generating capacity of 110 megawatts, presently planned to be constructed by the Northern California Power Agency and located in Sonoma County.

Nothing in this section shall be construed to indicate that the sites and facilities specified in this section are approved by the Legislature. The inclusion of any site and related facility in this section means that the provisions of this chapter do not apply to any such site or facility, to the extent that Section 25501.7 or 25502.3 is made applicable, and that such site and related facility is subject to any and all other provisions of law.

25501.7. Any person proposing to construct a facility or a site to which Section 25501 applies may waive the exclusion of such site and related facility from the provisions of this chapter by submitting to the commission a notice to that effect on or after July 1, 1976, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25502. Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission notice of intention to file an application for the certification of such site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standard of the commission and forecasts adopted pursuant to Sections 25216.3 and 25309. The notice shall be in the form prescribed by the commission and shall be supported by such information as the

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Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

25502.3. Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25502.5. The notice is not required to contain three alternative sites and related facilities for additional generating facilities on land owned by an electric utility before the effective date of this division at existing sites east of the town of Clay Station in Sacramento County, in the location commonly known as Diablo Canyon in San Luis Obispo County, and near the City of Pittsburg in Contra Costa County.

25503. Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined. If modification of an existing facility is proposed, the commission may require that alternative methods of providing the additional service or making the proposed modification be specified in the notice.

25504. The notice of intention shall include a statement by the applicant describing the location of the proposed sites by section or sections, range and township, and county; a summary of the proposed design criteria of the facilities; the type or types of fuels to be used; the methods of construction and operation; the proposed location of facilities and structures on each site; a preliminary statement of the relative economic,

Exhibit B

(Duplicate from CCO File)

SACRAMENTO ADDRESS
ROOM 5031
STATE CAPITOL 95814
AREA CODE 916—445-9740

DISTRICT ADDRESS
777 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95112
AREA CODE 408—286-8318

STATE SENATOR
ALFRED E. ALQUIST
THIRTEENTH SENATORIAL DISTRICT
REPRESENTING
SANTA CLARA COUNTY
IN THE
Senate

COMMITTEES
PUBLIC UTILITIES AND CORPORATIONS
CHAIRMAN
FINANCE
ELECTIONS AND REAPPORTIONMENT
EDUCATION

FILE AB 1575

May 7, 1974

Members of the Senate
State Capitol
Sacramento, California

Dear Colleague:

The State Energy Resources Conservation and Development Act (AB 1575) was reported out of the Finance Committee favorably on May 1, and will shortly be considered on the Senate floor. The bill is now supported by:

Honorable Ronald Reagan, Governor
Honorable Houston I. Flournoy, Controller
Honorable Evelle J. Younger, Attorney General
Honorable Tom Bradley, Mayor of Los Angeles
City Council of Los Angeles
Pacific Gas and Electric Company
Southern California Edison Company
San Diego Gas and Electric Company
Los Angeles Department of Water and Power
California Municipal Utilities Association
AFL-CIO
Sierra Club
Planning and Conservation League
Assembly Science & Technology Council, Panel on Energy Planning Programs
Lester Lees, Director of Environmental Quality Lab, California Institute of Technology and Chairman of the Lieutenant Governor's Energy Workshop
James H. Krieger, Co-chairman of the Lieutenant Governor's Energy Workshop

Supporting editorials have also been published in the Los Angeles Times and the McClatchy Newspapers and delivered by KABC-TV in Los Angeles. Recent editorials from the San Jose Mercury and the Los Angeles Times are attached for your consideration.

A number of questions have consistently been raised about provisions of this bill concerning appliance efficiency standards and the preemption of local jurisdictions involved in powerplant siting decisions. These issues were considered fully in the Assembly and have been dealt with in both the Public Utilities and Corporations Committee and the Finance Committee of the Senate.

To give you the benefit of much of this prior discussion, two brief papers are attached which summarize the main points of each dispute.

We hope you will find this information of value and urge your favorable consideration of this bill.

Best regards,

ALFRED ALQUIST CHARLES WARREN

AA:CW:vlg
Enclosures

PREEMPTION OF LOCAL GOVERNMENT IN SITING

The commission created by AB 1575 is authorized to certify powerplant sites in lieu of certification by all other local and state agencies presently involved in powerplant siting (Section 25500), with the exception of the Coastal Commission which the Legislature is prevented from preempting.

The debate over this authority has pointed out (1) that the preemptive power is necessary in order to consolidate deliberations ("one-stop siting") and to avoid excessive delays in constructing powerplants to serve the public but (2) that the rights and esires of the local residents directly affected by the plant must be protected.

AB 1575 achieves a balance between these two objectives by:

(a) Having ordinances and laws applicable to siting which are adopted by local government enforced by state energy commission (Sections 25216.3, 25523, and 25525).

(b) Overriding local laws and ordinances only after attempting to bring a plant in compliance and working out a solution acceptable to local agencies (Sections 25523(b)), and even then only when no reasonable and prudent alternative to the plant exists (Section 25525).

(c) Facilitating local input through conducting hearings on siting in the area slated for the plant giving adequate notice, circulating reports and applications for comment,

and providing opportunity for written comment from any citizen (Sections 25505, 25506, 25509, 25510, 25519 (e) and (f), and 25521).

Furthermore, existing processes for obtaining water contracts, bonding authority for ancillary facilities, and other similar arrangements operating at the local level indirectly related to siting are not affected by AB 1575.

The Senate has previously recognized the importance of preemption through its passage of SB 1195 and SB 1310 in 1972 and SB 283 in 1973, all of which provided a "one-stop" approach and its defeat of SB 1062 in 1972, a siting bill which did not preempt other agencies. But even in recognizing the importance of one-stop siting, these previous bills did not provide the very sensitive protection of local interests now included in AB 1575. Indeed, the preemption provisions have been characterized by the League of California Cities as necessary and reasonable.

MINIMUM ENERGY EFFICIENCY STANDARDS FOR APPLIANCES

In Section (c) of AB 1575, the state energy commission is required to adopt standards for energy efficiency in high energy-using appliances to become effective on July 1, 1977. This particular section of the bill is vigorously opposed by the Association of Home Appliance Manufacturers (AHAM) and the General Electric Company and their representatives have made several major objections.

(1) Are efficiency standards technically possible for appliances other than air conditioners?

The written statements of three appliance engineers in testimony indicate the standards are technically feasible so long as a standard use test pattern is established, as required in the bill.

In addition, the Assembly Science and Technology Advisory Council, the Rand Corporation, the Cal Tech Environmental Quality Lab, and the Office of Emergency Preparedness in the White House all concur that the standards are feasible.

In testimony, even AHAM admitted that they are currently engaged in the measurement of energy efficiencies of many of the major home appliances.

The bill specifically protects the industry from being faced with an impossible standard by constraining the commission to consider only feasible and reasonable measures.

(2) Will labeling achieve the same result as a mandatory standard?

New York State has had little success with its two-year-old labeling law. Testimony from a professional appliance engineer indicates labeling is "ineffectual" as an energy conservation technique since the consumer may not understand such information and is swayed by many factors other than efficiency.

AHAM indicated it was backing a labeling bill at the federal level. Originally, however, this bill by Senator Tunney called for minimum standards, but was weakened at the insistence of the industry. Tunney's staff indicated a preference for the minimum standard approach.

(3) Will efficiency standards raise appliance costs to consumers?

Higher efficiency does not necessarily mean higher purchase price. In 1972, one manufacturer sold eight models of 6,000 BTU room air conditions with the following efficiencies and retail prices:

Model	Efficiency (BTU/watt-hr.)	Price
1	4.9	$200
2	6.1	160
3	6.1	170
4	6.1	180
5	6.7	210
6	6.9	170
7	6.9	180
8	6.9	190

As this table indicates, the most efficient modeal was among the cheapest (No. 6 - $170) and the least efficient modeal was among the most expensive (No. 1 - $200). Obviously the selling price of these room air conditioners is influenced by many factors other than efficiency (i.e., trim features, fan speeds, ventilation and exhaust features), obscuring the effect of efficiency on price.

But regardless of the impact of higher efficiency on purchase price, improved efficiencies will reduce the annual energy consumption of the appliance and thereby decrease operating costs. In other words, even if a more efficient appliance initially were costlier, these costs could be repaid in as little as two to three years through lower operating expenses. After this balance point is reached, the consumer will actually be saving money.

In Section 25402 (c) the guarantee is given that there will be no higher total costs (both initial costs and operating costs) borne by the consumer owing to the efficiency standards: "Such standards shall be drawn so that they do not result in any added total costs to the consumer over the designed life of the appliance concerned." Since this guarantee is incorporated as a direct constraint on the standard-setting authority of the commission, higher total costs to the consumer are avoided.

(4) Will appliance standards save substantial energy?

Using data developed in the report, The Potential for Energy Conservation, issued by the Office of Emergency Preparedness in

the White House in October 1972, minimum efficiency standards for only 4 major appliances (water heaters, ranges, refrigerators, and air conditioners) would save California the energy equivalent of 42,000 barrels of oil per day or 16 million barrels annually--by no means an insignificant amount.

(5) Will the standards program be very costly to the state government?

Certification and enforcement for the vehicle emission standards program in the state costs $650,000 per year. If the appliance program had costs as high (which is doubtful because of the reduced requirements for after-purchase testing), it would be the equivalent of paying 4¢ for each barrel of oil saved.

(6) Is there too little time for industry to comply with such standards?

The AHAM witnesses indicated that 18-24 months would be required to develop testing and certification procedures for implementing appliance efficiency standards. The industry is now, at its own expense, developing appropriate testing procedures and has over 36 months to prepare for the standards to be established by the state energy commission.

(7) Because of interstate commerce complications, should individual states adopt appliance standards?

The Congress has avoided implementing similar standards, largely due to pressures from the appliance industry. Similar interstate commerce concerns were voiced when California implemented vehicle emission standards, yet market relations were not seriously disrupted. Senator Tunney's staff points out that members of the appliance industry have opposed even a federal labeling bill saying this should be left to the states. The ambivalent industry position may indicate a more fundamental opposition to any substantive efforts in this area rather than a concern for interstate commerce complications.

Legislative Counsel opinion #9715 indicates there are no unreasonable interstate commerce burdens.

Exhibit C

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Opinion No. SO 75-47—October 31, 1975

SUBJECT: CONSTRUCTION OF NUCLEAR POWER PLANT—While there is no specific time limit within which PG&E must commence actual construction of a nuclear power plant in Stanislaus County, PG&E must diligently pursue its plans to do so within three years of effective date of the Warren-Alquist State Energy Resources Conservation and Development Act (Energy Act), or it could, under appropriate circumstances, be deemed to have impliedly waived exemption as provided in Public Resources Code section 25501(a) through inaction or unreasonable delay. Site testing, including erection of weather tower and excavation of deep trenches, does not constitute construction within meaning of section 25105. Since the Energy Act provides that the state energy commission evaluate, regulate, and approve thermal power plant sites and facilities, a county government would not have power to regulate or prohibit construction of such plant if the plant should fall under jurisdiction of the state commission. But the commission must solicit extensive comments and recommendations from county government concerning power plant site and facility proposals. Neither the Williamson Act (regarding preservation of agricultural, recreational, and open space land) nor the Energy Act intends that existence of an open space preservation contract should necessarily prohibit construction of nuclear power plant on land under contract, where there is no other land on which it is reasonably feasible to locate proposed plant.

Requested by: ASSEMBLYMAN, 27th DISTRICT

Opinion by: EVELLE J. YOUNGER, Attorney General
Robert B. Keeler, Deputy

The Honorable John E. Thurman, Assemblyman, Twenty-Seventh District, has requested the opinion of this office on the following questions:

In view of the inclusion of a nuclear power plant in Stanislaus County as "Nuclear A" in the Warren-Alquist State Energy Resources Conservation Act, Section 25501.5(a) and in view of provisions of the act in Public Resources Code[1] sections 25501.5(b), 25500, 25500.5, 25501, 25501.3, 25501.7, 25502.3 and the definitions contained in section 25105:

(1) By what date must PG&E commence construction of Nuclear A to qualify as an exception to the act? Is there any time limit at all?

(2) If there is a time limit, what constitutes construction? Does site testing, including erection of a weather tower and deep trenches, constitute construction within the meaning of the act?

(3) If Nuclear A does fall under provisions of the act, rather than the exceptions, what powers does a county government have to regulate, comment upon or prohibit construction of the nuclear plant?

[1] Unless otherwise indicated, all statutory references hereinafter will be to the Public Resources Code.

PG&E could reasonably rely in proceeding with the construction of Nuclear A so that the Legislature would thereafter be estopped from changing the Public Utilities Code or any other present law as it applies to the facility and imposing additional requirements on its approval, or entirely precluding its construction.

If the inclusion of Nuclear A in section 25501.5 is not an approval of the project, and if the Legislature can therefore change the present law to impose additional requirements on its approval or to entirely preclude its construction, then it must be concluded that the Legislature can at any time remove the exemption granted Nuclear A under section 25501.5 and submit it to the requirements of the Energy Act, even if PG&E acts in so-called "reliance" on the exemption by proceeding in the normal course of business with plans and preparations for the facility.[5] If the Legislature cannot be estopped from imposing additional requirements on the approval of Nuclear A under present law, it cannot be estopped from accomplishing the same thing by revoking the section 25501.5 exemption.

(3) *Waiver*

Having concluded that the section 25501.5 exemption does not constitute a basis for asserting any vested or estoppel rights against the Legislature's revoking the exclusion, the next issue is to determine the circumstances under which PG&E could waive the exemption, absent any legislative action to revoke it.

First of all, the Energy Act itself provides two alternative methods for waiving the exemption. One can either submit a notice of waiver to the Energy Commission on or after July 1, 1976, section 25501.7, or one can submit to the Commission a notice of intent to file an application for certification of a site and related facility. § 25502.3 In either case, the exemption is waived "and any and all of the provisions of this chapter shall apply to the construction of such facility." §§ 25501.7 and 25502.3.

Secondly, a waiver may occur as a result of conduct which is so inconsistent with a plan to commence construction within three years of the effective date of the Act as to induce a reasonable belief that any such plan has been relinquished.[6]

[5] It should be pointed out that whether Nuclear A were exempted from the Energy Act or not, PG&E would in all likelihood proceed in the ordinary course of business with plans and preparations for the facility, assuming the company's decision to build the plant is still operable. Such plans and preparations are necessary no matter which governmental body is to consider the project, whether the Public Utilities Commission, the Energy Commission, or any other body. It is therefore highly unlikely that PG&E's proceeding with such plans could be said to be "in reliance on" the section 25501.5 exemption.

[6] We are of the opinion that the judicial maxim *expressio unius est exclusio alterius*—the express mention of one thing implies the exclusion of others—would not apply in this situation. This maxim, like all others, must give way where it would operate contrary to legislative intent or purpose. *Irwin* v. *City of Manhattan Beach*, 65 Cal. 2d 13, 21 (1966); *People* v. *Hacker Emporium, Inc.*, 15 Cal. App. 3d 474, 477 (1971). As we conclude below, if PG&E's conduct with respect to Nuclear A proves so inconsistent with the intent to commence construction within the three-year period that one could reasonably conclude that such intent had been abandoned, the facility would be placed outside the legislative policy upon which section 25501 subdivision (b) is based—protecting the public from the potential disruption of a *de facto* three-year moratorium on the construction of new thermal power plant facilities—and within the broader legislative intent or policy of subjecting all such facilities for which construction is planned to commence after the three-year period to

See, e.g., Crest Catering Co. v. *Northwestern Mutual In*

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See, e.g., Crest Catering Co. v. *Superior Court*, 62 Cal. 2d 274, 278 (1965); *Dalzell* v. *Northwestern Mutual Ins. Co.*, 218 Cal. App. 2d 96, 101-102 (1963).

The inclusion of Nuclear A in section 25501.5 means that the Legislature found and declared that Nuclear A met the requirements of section 25501 subdivision (b); that is, that as of the effective date of the Act, construction was planned to commence on the facility within three years of that date and that the provisions of the Act therefore would not apply to it. Since the process of obtaining Energy Commission approval of a particular thermal power plant can take up to three years or more under the various time periods specified in the Act (§§ 25509, 25510, 25513, 25514, 25515, 25516, 25519 subdivision (a), 25522), it is reasonable to assume that one of the basic purposes of the three-year exemption period of section 25501 subdivision (b) is to assure that the public's need for additional electrical energy during the first three years of the Act's existence will continue to be met by allowing those new thermal power plans to be commenced during that period for which a public need has been shown as suggested in section 25501.3 subdivision (a). If it were not for the three-year exemption period created by section 25501 subdivision (b), no new thermal power plants not actually approved and commenced before the Energy Act could be commenced between the effective date of the Act and the date when the first Energy Commission certificate is granted (*see* §§ 25500, 25517)—up to three years from the Act's effective date. Thus it appears that the Legislature created the three-year exemption period of section 25501 subdivision (b) to protect the public from the potential disruption of such a three-year moratorium on new power plant construction.[8]

On the other hand, the Legislature created the Energy Commission and set up the elaborate power plant approval process of the Energy Act in response to the "present rapid rate of growth in demand for electrical energy." § 25002. In an effort to prevent the "serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality," *id.*,

the high degree of scrutiny which the Act requires the Energy Commission to exercise. *See* text accompanying footnote 9, *infra*. To mechanically apply the above maxim and conclude that the enumeration of the express waivers of sections 25501.7 and 25502.3 excludes the application of an implied waiver as discussed herein, would be directly contrary to that legislative policy.

Note that the exemption provided by section 25501 subdivision (b) applies to a facility for which construction is "planned to commence" within the three-year period, not for which construction "shall" or "will" commence within that period. As originally introduced in the Legislature, the section read "for which construction is planned to commence and shall have commenced" within the three-year period; but "shall have commenced" was later deleted, evidencing a legislative intent not to insist on the actual commencement of construction within that period. *See* Assembly Bill 1575, 1973-74 Regular Session, section 25501 subdivision (b), as amended April 4, 1974. *See also Rich* v. *State Board of Optometry*, 235 Cal. App. 2d 591, 607 (1965): "The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision."

[8] A secondary reason for creating the exemption might be to allow the Energy Commission sufficient time to establish its certification procedures before requiring it to begin processing applications. It could not be said, however, that the three-year exemption period had been created to protect the rights of the utility companies in their planned facilities. We have already established that the companies have no vested or estoppel rights against the Legislature's revoking the exemption if it so chooses.

the Legislature declared it to be the policy of this state "to establish and consolidate the state's responsibility for energy resources [¶] . . . and for regulating electrical generating and related transmission facilities." § 25006. In other words, it is the established policy of this state to submit the future construction of electric generating facilities to the high degree of scrutiny required by the Energy Act in order to more carefully balance our increasing demand for electrical energy with the increasing need to slow the depletion of natural resources caused by that demand.

The three-year exemption period created by section 25501 subdivision (b) must be interpreted in light of these two policies—to protect the public from the disruptive effects of a three-year construction moratorium on new electric generating facilities, and to submit the construction of such facilities to the higher degree of scrutiny and resulting public resources protection required by the Energy Act. In striking a balance between these two policies, the Legislature has declared that facilities "for which construction is planned to commence within three years of the effective date" of the Energy Act do not need to be subjected to Energy Commission scrutiny, but those for which construction is planned to commence after that period do. Therefore, as long as PG&E diligently pursues its plans in the normal course of business to commence construction of Nuclear A within three years of the effective date of the Energy Act, its conduct could be said to be consistent with the policy of the Legislature as expressed in section 25501 subdivision (b), and the exemption would remain in effect.

If, however, the conduct of PG&E with respect to Nuclear A should prove to be so inconsistent with the intent to commence construction within the three-year period as to induce a reasonable belief that the company could no longer have that intent because of unreasonable delay (*see Crest Catering Co. v. Superior Court, supra*, 62 Cal. 2d 274, 278; *Dalzell* v. *Northwestern Mutual Ins. Co., supra*, 218 Cal. App. 2d 96, 101-02), one could conclude that PG&E had abandoned or waived the exemption conferred by section 25501.5. This would be so not merely because rights conferred by statute can be waived by inaction or delay (*see Chesney* v. *Byram*, 15 Cal. 2d 460, 469 (1940); *People* v. *Sierra*, 117 Cal. App. 2d 649, 652 (1953); *McHugh* v. *County of Santa Cruz*, 33 Cal. App. 3d 533, 541-42 (1973), but more importantly because such a delay would place Nuclear A outside and in conflict with the policy consideration on which section 25501 subdivision (b) is based—to protect the public against a three-year new power plant construction moratorium—and within the larger policy considerations of subjecting all thermal power plant facilities for which construction is planned to commence after the three-year period to the scrutiny of the Energy Commission.[9]

[9] *Cf. People ex rel. S.F. Bay etc. Com.* v. *Town of Emeryville*, 69 Cal. 2d 533 (1968), where the Supreme Court held that the Town of Emeryville had abandoned whatever exemption it may have had from the McAteer-Petris Act creating the San Francisco Bay Conservation and Development Commission, because the town had been forced to substantially alter the development project it had planned to construct as of the effective date of the Act. One reason for the Court's holding was that the exemption provision should be strictly construed so as to further the "objective sought to be achieved" by the Act: the protection of San Francisco Bay from the destructive effects of further indiscriminate shoreline development projects. *See* 69 Cal. 2d at 543-49.

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Exhibit D

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
May 13, 1974

Honorable Raymond Gonzales
Assembly Chamber

Energy Resources: Powerplants
(A.B. 1575) - #9867

Dear Mr. Gonzales:

You have directed our attention to Assembly Bill No. 1575, as amended in Senate May 2, 1974, relating to energy resources, and have asked the following two questions which are considered below.

QUESTION NO. 1

Would the authority of local governments be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the jurisdiction of the State Energy Resources Conservation and Development Commission?[1]

OPINION NO. 1

With certain exceptions, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

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[1] Hereinafter referred to as the "commission."

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ANALYSIS NO. 1

The provisions of A.B. 1575 would, if enacted, among other things, enact the Warren-Alquist State Energy Resources Conservation and Development Act (Div. 15 (commencing with Sec. 25000), P.R.C.[2]). Very generally, such provisions would provide for the establishment of the commission (Sec. 25200, et seq.), the forecasting and assessment of energy demands and supplies (Sec. 25300, et seq.), for conservation of energy resources by designated methods (Sec. 25400, et seq.), and for certification of power sites and facilities (Sec. 25500, et seq.); require the commission to develop and coordinate a program of research and development in energy supply, consumption, and conservation and the technology of siting facilities (Sec. 25600, et seq.), and provide for the development of contingency plans to deal with possible shortages of electrical energy or fuel supplies (Sec. 25700, et seq.).

Initially, we note that any city or county may enact reasonable zoning ordinances which are not in conflict with the general law under the police power of Section 7 of Article XI of the California Constitution (Lockard v. City of Los Angeles, 33 Cal. 2d 453). This would generally include the authority to issue permits for the construction of powerplants.

Section 25500 would provide as follows:

> "25500. In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, except for any site and related facility proposed to be located in the permit area[3], whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency

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2 All section references, unless otherwise indicated, are to sections of the Public Resources Code, as proposed to be added by A.B. 1575.

3 The area in which permits for developments are required under the California Coastal Zone Conservation Act of 1972 (Sec. 27000, et seq.; and particularly Sec. 27104).

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> to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.
>
> "After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division." (Emphasis added.)

The term "site" would mean "any location on which a facility is constructed or is proposed to be constructed" (Sec. 25119). "Facility" would include any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto (Secs. 25110, 25120).

Generally, as can be seen from the above, A.B. 1575 would, except as to sites and related facilities proposed to be located in the permit area, grant to the commission the exclusive power to certify all locations for electrical generating facilities, including nuclear thermal powerplants, with a generating capacity of 50 megawatts or more. The issuance of a certificate by the commission would be in lieu of any permit, certificate or similar document required by any state, local or regional agency, and after the effective date of this bill, no construction of any facility or modification of any existing facility would be permitted without obtaining certification for any such site and related facility from the commission.

Therefore, we think that, generally, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

At this point, it is observed that local governments would be provided an opportunity to participate in the process of forecasting and assessment of energy demands and supplies by A.B. 1575 (see Secs. 25302, 25303, 25305, and 25307) and to provide information, data, and their views in

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connection with the approval of a notice of intention to file an application and the certification of any site and related facilities (see Secs. 25505, 25506, 25509, 25510, 25512, 25513, 25514, 25519, 25523, and 25536). Furthermore, the commission would not be permitted to certify any facility contained in an application if the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity (Sec. 25525).

It is also noted that the commission would not be authorized to approve a site for a facility at a state, regional, county or city park, wilderness, scenic, or natural reserve, area for wildlife protection, recreation, or historic preservation, or natural preservation area in existence on the effective date of this bill, or any estuary in an essentially natural and undeveloped state, unless it finds that such use is not inconsistent with the primary uses of any such land and that there will be no substantial adverse environmental effects and the approval of any public agency having ownership or control of such lands is obtained (Sec. 25527).

Also, there would be certain designated sites and facilities which would be excluded from the power facility and site certification provisions (Secs. 25501, 25501.3, 25501.5), and there would be an authorization for the commission to exempt certain thermal powerplants from such provisions (Sec. 25541). As to an excluded or exempted site and facility or thermal powerplant, the authority of local governments would not be superseded, unless the person proposing to construct it waives the exclusion or exemption (see Secs. 25501.7, 25502.3, 25542), as more fully discussed in Analysis No. 2.

In summary, therefore, it is our opinion that with certain exceptions, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

QUESTION NO. 2

Would the authority of local governments be superseded in respect to regulating the location of an excluded

or exempted site and facility, including the nuclear thermal powerplant referred to in subdivision (e) of Section 25501.5?[4]

OPINION NO. 2

The authority of local governments would not be superseded in respect to regulating the location of an excluded or exempted site and facility, including the nuclear thermal powerplant referred to in subdivision (e) of Section 25501.5, unless the person proposing to construct such a facility waives the exclusion of the site and related facility from the power facility and site certification provisions.

ANALYSIS NO. 2

Section 25501, a part of the power facility and site certification provisions, would read as follows:

> "25501. The provisions of this chapter do not apply to any site and related facility which meets either of the following requirements:
>
> "(a) For which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division.
>
> "(b) For which construction is planned to commence within three years from the effective date of this division." (Emphasis added.)

As can be seen from the above, if any site and related facility meets the requirement of subdivision (b) of Section 25501, it would be excluded from the power facility and site certification provisions of A.B. 1575.

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[4] The proposed San Joaquin Nuclear Project of the Department of Water and Power of the City of Los Angeles, to be located in Kern County near the City of Wasco.

Section 25501.3 enumerates conditions under which a proposed site and related facility would be deemed to be one for which construction is planned to commence within three years from the effective date of A.B. 1575 within the meaning of subdivision (b) of Section 25501. Section 25501.5 would provide that the Legislature finds and declares that various designated proposed sites and facilities, including the proposed site and facility referred to in subdivison (e) of that section, meet the requirements of subdivision (b) of Section 25501.

It is a well established principle that the courts will accord great weight to legislative declarations (Monterey County Flood Control and Water Conservation Dist. v. Hughes, 201 Cal. App. 2d 197, 209).

Therefore, we think that a court, applying the above principle, could determine that there was a reasonable basis for the legislative findings in Section 25501.5 and thus uphold such exclusions. Thus, it is our opinion that the sites and facilities referred to in Section 25501.5, including the one referred to in subdivision (e), would be excluded from the power facility and site certification provisions of A.B. 1575, and the authority of local governments in respect to the location of such facilities would not be superseded (Sec. 25542).

In addition to the exclusions pursuant to Sections 25501, 25501.3, and 25501.5, the commission is authorized to exempt thermal powerplants with a generating capacity of up to 100 megawatts if it makes certain findings (Sec. 25541). As to any such exempted powerplant, the authority of local governments in respect to its location would not be superseded (Sec. 25542).

However, we observe that any person proposing to construct a facility which is excluded or exempted may waive, as prescribed, the exclusion or exemption of such site and related facility from the power facility and site certification provisions; and, if so, any and all of such provisions would apply to the construction of such facility (Secs. 25501.7, 25502.3). Therefore, any person proposing to construct a facility on an excluded or exempted site, including the

site referred to in subdivision (e) of Section 25501.5, could waive the exclusion of such site and related facility from the power facility and site certification provisions, and, in that case, the commission, as discussed generally in Analysis No. 1, would have the exclusive power to certify such site and facility.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Victor Kozielski
Deputy Legislative Counsel

VK:mcj

Two copies to Honorable Charles Warren, pursuant to Joint Rule 34.

Exhibit E

AMENDED IN SENATE MARCH 28, 1974

AMENDED IN SENATE FEBRUARY 19, 1974

AMENDED IN SENATE JANUARY 9, 1974

AMENDED IN ASSEMBLY AUGUST 6, 1973

AMENDED IN ASSEMBLY MAY 29, 1973

CALIFORNIA LEGISLATURE—1973–74 REGULAR SESSION

ASSEMBLY BILL No. 1575

Introduced by Assemblyman Warren
(Coauthor: Senator Alquist)

April 25, 1973

REFERRED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

An act to amend Section 21100 of, and to add Division 15 (commencing with Section 25000) to, the Public Resources Code, AND TO ADD CHAPTER 4.5 (COMMENCING WITH SECTION 900) TO PART 1 OF DIVISION 1 OF THE PUBLIC UTILITIES CODE, *relating to energy resources.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1575, as amended, Warren (Gov. Adm.). Energy resources.

Requires specifically that an environmental impact report prepared pursuant to the Environmental Quality Act of 1970 include a statement of measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

Enacts the Warren-Alquist State Energy Resources Conservation and Development Act.

25500. In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, except for any site and related facility proposed to be located in the permit area, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

25500.5. The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the ~~demand consistent with all of the following:~~ *demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.*

~~(a) The forecast of statewide and service area electric power demands adopted pursuant to Section 25309.~~

~~(b) The conservation measures adopted by the commission pursuant to this division.~~

~~(c) Any conservation measures imposed or adopted under any provision of law.~~

25501. The provisions of this division do not apply to any site and related facility: (a) for which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division, provided that such facility shall not provide capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the

reports required under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973; or, (b) for which an application for a certificate of public convenience and necessity is on file with the Public Utilities Commission by the effective date of this division and for which construction is planned to commence and shall have commenced within three years from the effective date of this division, provided that such planned construction shall not create capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the reports required under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973.

25501.3. The provisions of this division shall not apply to any site and related facility for which a certificate of public convenience and necessity from the Public Utilities Commission is not required and for which construction is planned to commence and shall have commenced within three years from the effective date of this division provided that such planned construction shall not create capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the reports submitted under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973.

25501.5. In the case of any site and related facility or facilities not covered by the provisions of this division and for which a certificate of public convenience and necessity *is required but* has not been issued by the Public Utilities Commission, the following shall apply:

(a) On the completion of the hearing, the Public Utilities Commission shall supply the commission with its hearing record.

(b) The commission shall review the information supplied by the Public Utilities Commission and shall, within 90 days after it receives such information, advise the Public Utilities Commission and the applicant of the recommendation of the commission that the certificate of

public convenience and necessity be denied, approved, or approved subject to specified conditions. There shall be a rebuttable presumption in favor of the commission's recommendation.

25502. Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission notice of intention to file an application for the certification of such site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and forecasts adopted pursuant to Sections 25216.3 and 25309. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any person proposing to construct a facility excluded from the provisions of this division may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25503. Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined. If modification of an existing facility is proposed, the commission may require that alternative methods of providing the additional service or making the proposed modification be specified in the notice.

25504. The notice of intention shall include a statement by the applicant describing the location of the proposed sites by section or sections, range and township, and county; a summary of the proposed design criteria of the facilities; the type or types of fuels to be used; the

Exhibit F

AMENDED IN SENATE APRIL 4, 1974

AMENDED IN SENATE MARCH 28, 1974

AMENDED IN SENATE FEBRUARY 19, 1974

AMENDED IN SENATE JANUARY 9, 1974

AMENDED IN ASSEMBLY AUGUST 6, 1973

AMENDED IN ASSEMBLY MAY 29, 1973

CALIFORNIA LEGISLATURE—1973–74 REGULAR SESSION

ASSEMBLY BILL No. 1575

Introduced by Assemblyman Warren
(Coauthor: Senator Alquist)

April 25, 1973

REFERRED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

An act to amend Section 21100 of, and to add Division 15 (commencing with Section 25000) to, the Public Resources ~~Code, and to add Chapter 1.5 (commencing with Section 900) to Part 1 of Division 1 of the Public Utilities~~ Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1575, as amended, Warren (Gov. Adm.). Energy resources.

Requires specifically that an environmental impact report prepared pursuant to the Environmental Quality Act of 1970 include a statement of measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

Enacts the Warren-Alquist State Energy Resources Conservation and Development Act.

25500.5. The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

~~25501. The provisions of this division do not apply to any site and related facility (a) for which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division, provided that such facility shall not provide capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the reports required under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973, or (b) for which an application for a certificate of public convenience and necessity is on file with the Public Utilities Commission by the effective date of this division and for which construction is planned to commence and shall have commenced within three years from the effective date of this division, provided that such planned construction shall not create capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the reports required under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973.~~

~~25501.3. The provisions of this division shall not apply to any site and related facility for which a certificate of public convenience and necessity from the Public Utilities Commission is not required and for which construction is planned to commence and shall have commenced within three years from the effective date of this division provided that such planned construction shall not create capacity on its planned operating date exceeding the estimated number of megawatts of needed capacity for the year of that planned operating date as stated in the reports submitted under Section 2 of General Order 131 of the Public Utilities Commission as of March 31, 1973, and~~

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~~25501.5. In the case of any site and related facility or facilities not covered by the provisions of this division and for which a certificate of public convenience and necessity is required but has not been issued by the Public Utilities Commission, the following shall apply:~~

~~(a) On the completion of the hearing, the Public Utilities Commission shall supply the commission with its hearing record.~~

~~(b) The commission shall review the information supplied by the Public Utilities Commission and shall, within 90 days after it receives such information, advise the Public Utilities Commission and the applicant of the recommendation of the commission that the certificate of public convenience and necessity be denied, approved, or approved subject to specified conditions. There shall be a rebuttable presumption in favor of the commission's recommendation.~~

25501. The provisions of this chapter do not apply to any site and related facility which meets either of the following requirements:

(a) For which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division.

(b) For which construction is planned to commence within three years from the effective date of this division.

25501.3. A proposed site and related facility shall be deemed to be one for which construction is planned to commence within three years from the effective date of this division within the meaning of subdivision (b) of Section 25501, if all of the following are satisfied:

(a) The planned operating date and the planned capacity are consistent with the forecast of electric loads either set forth in a report submitted under Sections 2 and 3 of General Order 131 of the Public Utilities Commission as of March 31, 1974, or otherwise disclosed in a report of a public agency as of March 31, 1974.

(b) The need to commence construction within three years from the effective date of this division is reasonably related to the planned operating date of such site and

related facility.

(c) Substantial funds have been expended or committed for planning, site investigations, site acquisition, or equipment procurement for such site and related facility prior to the effective date of this division.

25501.5. The Legislature finds and declares that the following proposed sites and facilities with the associated estimated generating capacities meet the requirements of subdivision (b) of Section 25501:

(a) As designated in the report of the Pacific Gas and Electric Company submitted to the Public Utilities Commission on March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, three gas turbine powerplants, each having a generating capacity of 52 megawatts, commonly known as Potrero Unit 4, Potrero Unit 5 and Potrero Unit 6, to be located in the City and County of San Francisco, a gas turbine powerplant having a generating capacity of 52 megawatts, commonly known as Hunters Point Unit 1, to be located in the City and County of San Francisco, a gas turbine powerplant having a generating capacity of 200 megawatts, commonly known as Station C, a geothermal powerplant having a generating capacity of 106 megawatts, commonly known as Geysers Unit 12, to be located in Sonoma County, a geothermal powerplant having a generating capacity of 110 megawatts, commonly known as Geysers Unit 14, to be located in Sonoma County, a geothermal powerplant having a generating capacity of 55 megawatts, commonly known as Geysers Unit 15, to be located in Sonoma County, a geothermal powerplant having a generating capacity of 135 megawatts, commonly known as Geysers Unit 13, to be located in Lake County, a geothermal powerplant having a generating capacity of 110 megawatts, planned for operation in 1978, to be located in Sonoma County or Lake County, a geothermal powerplant having a generating capacity of 110 megawatts, planned for operation in 1979, to be located in Sonoma County or Lake County, a combined-cycle powerplant having a generating capacity of 800 megawatts, commonly known as Thermal

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as Thermal 78, to be located in Contra Costa County near the City of Pittsburg, two combined-cycle powerplants, each having a generating capacity of 800 megawatts, commonly known as Thermal 79 and Thermal 81, to be located in Contra Costa County or Solano County, and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Nuclear A to be located in Region 1, as shown on page 27 of the report of the Pacific Gas and Electric Company submitted March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, or at the location commonly known as Diablo Canyon in San Luis Obispo County.

(b) As described in the report of the Southern California Edison Company submitted to the Public Utilities Commission on March 8, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two combined-cycle powerplants, each with a generating capacity of 236 megawatts, commonly known as Cool Water Unit 3 and Cool Water Unit 4, to be located in San Bernardino County; six combined-cycle powerplants, each having a generating capacity of 236 megawatts, commonly known as Huntington Beach Unit 6, Huntington Beach Unit 7, Huntington Beach Unit 8, Huntington Beach Unit 9, Huntington Beach Unit 10 and Huntington Beach Unit 11, to be located in the City of Huntington Beach; three combined-cycle powerplants, each with a generating capacity of 414 megawatts, commonly known as Lucerne Valley Unit 1, Lucerne Valley Unit 2 and Lucerne Valley Unit 3, to be located in San Bernardino County; and two nuclear powerplants, each having a generating capacity of 760 megawatts, commonly known as the Desert Nuclear Project.

(c) As described in the report of the San Diego Gas and Electric Company submitted to the Public Utilities Commission on March 22, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two gas turbine powerplants, each having a generating capacity of 64 megawatts, commonly known

as South Bay Gas Turbine Unit 3 and South Bay Gas Turbine Unit 4, to be located in San Diego County; a fossil-fueled powerplant having a generating capacity of 292 megawatts, commonly known as Encina Unit 5, to be located in San Diego County; a combined-cycle powerplant having a generating capacity of 404 megawatts, planned for operation in 1979, to be located in San Diego County; and a nuclear powerplant having a generating capacity of 1,200 megawatts, commonly known as the Desert Nuclear Project, to be located in Riverside County.

(d) As described in the report of the Pacific Gas and Electric Company to the Public Utilities Commission submitted March 1, 1974, in response to Sections 2 and 3 of the General Order 131 of the Public Utilities Commission, a gas turbine powerplant having a generating capacity of 150 megawatts, commonly known as SMUD Gas Turbines, to be located in Sacramento County; and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Rancho Seco Unit 2, to be located in Sacramento County.

(e) As described in the report of the Department of Water and Power of the City of Los Angeles submitted to the Public Utilities Commission on March 18, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, a nuclear powerplant having a generating capacity of 1,300 megawatts, commonly known as the San Joaquin Nuclear Project, to be located in Kern County near the City of Wasco.

(f) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and to be located in Imperial County.

(g) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and located in Inyo County.

(h) Two geothermal powerplants, each having a generating capacity of 110 megawatts, presently planned to be constructed by the Northern California Power

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Nothing in this section shall be construed to indicate that the sites and facilities specified in this section are approved by the Legislature. The inclusion of any site and related facility in this section means that the provisions of this chapter do not apply to any such site or facility, to the extent that Section 25501.7 or 25502.3 is made applicable, and that such site and related facility is subject to any and all other provisions of law.

25501.7. Any person proposing to construct a facility or a site to which Section 23501 applies may waive the exclusion of such site and related facility from the provisions of this chapter by submitting to the commission a notice to that effect on or after July 1, 1976, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25502. Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission notice of intention to file an application for the certification of such site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and forecasts adopted pursuant to Sections 25216.3 and 25309. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

~~Any~~

25502.3. Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this ~~division~~ *chapter* may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any

and all of the provisions of this chapter shall apply to the construction of such facility.

25502.5. The notice is not required to contain three alternative sites and related facilities for additional generating facilities on land owned by an electric utility before the effective date of this division at existing sites east of the town of Clay Station in Sacramento County, in the location commonly known as Diablo Canyon in San Luis Obispo County, and near the City of Pittsburg in Contra Costa County.

25503. Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined. If modification of an existing facility is proposed, the commission may require that alternative methods of providing the additional service or making the proposed modification be specified in the notice.

25504. The notice of intention shall include a statement by the applicant describing the location of the proposed sites by section or sections, range and township, and county, a summary of the proposed design criteria of the facilities, the type or types of fuels to be used, the methods of construction and operation, the proposed location of facilities and structures on each site, a preliminary statement of the relative economic, technological, and environmental advantages and disadvantages of the alternative site and related facility proposals, a statement of need for the facility and information showing the compatibility of the proposals with the most recent biennial report issued pursuant to Section 25309, and any other information that an electric utility deems desirable to submit to the commission.

25504.5. An applicant may, in the notice, propose a site to be approved which will accommodate a potential maximum electric generating capacity in excess of the

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Exhibit G

STATE CAPITOL
SACRAMENTO 95814
TELEPHONE: (916) 445-8366

California Legislature

Subcommittee on State Energy Policy of the Assembly Planning, Land Use, and Energy Committee

CHARLES WARREN
CHAIRMAN

April 8, 1974

MEMORANDUM

TO: CHARLES WARREN

FROM: STAFF

RE: AB 1575 - GRANDFATHER CLAUSE

Because a number of questions are already being raised about the grandfather clause, this brief summary may be of some value in explaining it.

The grandfather clause is designed in the following fashion:

Section 25501 gives the two criteria for exemption--either a certificate of PC&N from the PUC before January 7, 1975, or a planned construction start date prior to January 7, 1978.

Section 25501.3 specifies three criteria for determining whether a plant has a valid construction start date prior to January 7, 1978. These criteria are:

---a planned operating date consistent with forecast demand reported under G.O. 131 (for most major utilities) or otherwise disclosed in a public document (for the small public-owned systems).

---a need to start construction prior to January 7, 1978, which is justifiable on the basis of the planned operating date.

---a substantial expenditure of funds for planning or equipment prior to January 7, 1975.

These criteria are not exclusive. A person can still contend that his plant was planned to start construction prior to 1978 and can make a showing to that effect before the new commission or the courts based on other document action in an attempt to have that plant exempted. This flexibility is important (1) to a company like Dow which is in an advanced stage of planning now for a plant at the Geysers, (2) for small public-owned utilities who may find current plans for geothermal development overly optimistic and have to retreat to fossil-fueled units, (3) for the major utilities who may encounter objections to present plans and need to bring another unit on-line to plug the gap.

Note that the exempted plants will still be subject to the full review of existing processes and will not avoid regulation altogether.

Section 25501.5 lists the particular plants which the Legislature declares meet the criteria of Section 25501.3. The list grandfathers 14,200 MW of generating capacity, or a little more than a third of present capacity. The total includes 1300 MW in geothermal units, 6700 MW in fossil-fueled units, and 6200 MW in nuclear units. The nuclear units are to be located either in the desert or in the Central Valley, with only one unit potentially to be sited on the coast if the primary alternative is later judged unsuitable.

Why have the plants been listed?

There is no unambiguous way to delimit the exempted plants for both the public-owned and privately-owned utilities short of an actual list. The alternative is to depend on the courts or the commission to determine which plants are eligible for exemption. The utilities find this degree of uncertainty undesirable, feeling it will engender considerable delay. Because no external public agency document now exists which establishes current planned construction dates for all power plants in the state, the list in the bill is the next best option.

Have an excessive number of plants been listed?

Currently, there is approximately 36,000 MW of generating capacity in the state. At the recent rate of growth in demand (6.8%), another 36,000 MW of capacity would have to be constructed by 1985. Every three years, then, roughly one-third of this 36,000 MW must start construction The 14,000 MW grandfathered in the list then is the one-third of needed ten-year capacity appropriate for the three year transition period and no more. In previous versions of the bill, the three year transition period was included but without specifically listing the plants. Under this previous version the same plants would have been eligible for exemption from the new commission.

If in fact a utility does not start construction on a plant in the list reasonably within the three-year period, or tries to build the plant in excess of legitimate need, the utility can be immediately challenged on the basis that the plant does not meet the criteria in Section 25501.3 nor the intent of Section 25501. Furthermore, the legislative declaration made in Section 25501.5 gives no approval of the power plants listed, but only states that those plants are subject to the jurisdiction of all other existing agencies with a siting role.

Exhibit H

SENATE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

SB 928 - ROGERS

Hearing date: 5-5-87

Public Resources Code

Appropriations: Yes

SENATE BILL 928:

would modify the definition of "thermal powerplant" to clarify that wind, hydroelectric and solar photovoltaic electrical generating facilities are not thermal powerplants.

BACKGROUND

Under the Warren-Alquist Act, the California Energy Commission (CEC) is responsible for siting thermal powerplants of a size equal to or greater than 50 megawatts (MW). Electrical generating facilities which are not thermally powered are exempt from the CEC's siting authority.

Thermal electric power generally refers to electric energy produced by a turbine and generator using thermal fuel. Thermal generation fuels include gas, oil, nuclear, coal, geothermal steam, and industrial or residential waste products.

Currently, the CEC does not consider wind, hydroelectric or solar photovoltaic electric generating facilities to fall within the definition of "thermal powerplant."

Last year during interim, the Committee considered SB 2290 (Alquist) which would have expanded CEC jurisdiction to include the siting of thermal powerplants of a size equal to or greater than 20 MW.

SB 494 (Rosenthal), introduced this year, would modify the definition of thermal powerplant to include "mobile" generating facilities.

DESCRIPTION

SB 928 would add the following provision to the definition of "thermal powerplant":

> "Thermal powerplant" does not include any wind, hydroelectric, or solar photovol(aire) (sic) electrical generating facility."

COMMENTS

1. SB 928 was introduced by the author to clarify existing law and to give assurances to businesses engaged in renewable energy development, such as wind, hydro and solar energy developers, that they will not be subject to regulatory burdens associated with CEC siting jurisidiction.

STATEMENT ON SB 928 BEFORE THE SENATE COMMITTEE ON ENERGY AND PUBLIC UTILITIES - May 5, 1987

The purpose of SB 928 is to clarify existing law relating to the California Energy Commission's jurisdiction over renewable energy resources. Currently, the Commission has authority to regulate development of thermal powerplants over 50 MW but not wind, solar or hydroelectric plants which are not thermal.

There has been concern that the Commission wants to expand its jurisdiction. Legislation introduced last year would have allowed the Commission to have authority over smaller power plants. Although this legislation was defeated, I feel that a clarification of existing law will help to send a signal that more regulation over renewable energy development is not needed.

The Energy Commission has informed me that its regulations currently state that these renewable energy resources are not defined as "thermal" powerplants; therefore, SB 928 simply codifies their current regulations. You may ask, then, why is SB 928 needed. It is needed because, as many of you know, regulations can always be changed. This is evident in the Commission's current regulatory proceedings regarding the definition of a "50 Megawatt" powerplant and whether development of several smaller sized plants which accumulatively total more than 50 Megawatts fall under the CEC's jurisdiction. Regulations are subject to interpretation. I want to ensure that the law is clear with regards to these renewable resources.

Government regulations can impose severe hardships on small companies. SB 928 will give assurances to businesses engaged in renewable energy development that the Legislature does not want to impose additional regulatory burdens on them. My Senate District contains numerous sources of renewable energy - wind farms in the Tehachapi, hydroelectric resources in the mountains and solar is being developed in the Carizza Plains and Mojave Desert. SB 928 stems from my support for the development of these industries.

Seawest Industries, a wind company in my district, is in support of SB 928 and there is no known opposition. I urge your aye vote and request that it be placed upon the consent calendar.

KF

Honorable Don Rogers
Member of the Senate
State Capitol, Room 2068
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Rogers	SB 928

SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		Original

BILL SUMMARY

This bill would revise the definition of thermal power plant in existing law to clarify that wind, hydroelectric, and solar photovoltaic electrical generating facilities are not thermal power plants.

SUMMARY OF COMMENTS

This bill would clarify existing law by exempting electrical generating facilities which are not thermally powered from the CEC's siting authority. CEC staff indicate that this bill would have no fiscal or programmatic impact on the Commission's existing programs.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1986-87	FC 1987-88	FC 1988-89	Code Fund
3360/CEC	SO	NO FISCAL IMPACT			

Impact on State Appropriations Limit--No.

ANALYSIS

A. Specific Findings

Under existing law, the CEC is responsible for siting thermal power plants that are 50 megawatts or greater. Thermal generation fuels include gas, oil, nuclear, coal, geothermal steam, and industrial or residential waste products. Currently, electrical generating facilities which are not thermally powered are exempt from the CEC's siting authority.

This bill would revise the definition of thermal power plant to specifically exclude any wind, hydroelectric, or solar photovoltaic electrical generating facility. Since the CEC does not include these types of facilities within the definition of thermal power plant for siting purposes, the author's intent is to clarify existing law and assure renewable energy developers (wind, hydro, and solar) that they will not be subject to the CEC siting jurisdiction.

B. Fiscal Analysis

CEC staff indicate that this bill would have no fiscal or programmatic impact on the Commission's existing programs.

POSITION:	Department Director	Date
Neutral		

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
(552)	5/8		5/8	Position noted
				Position approved
				Position disapproved
				by: date:

HW:0075q/2

From Consent Calendar SB 928

SENATE THIRD READING

SB 928 (Rogers) - As Amended: August 1, 1988

SENATE VOTE: 35-0

ASSEMBLY ACTIONS:

COMMITTEE	VOTE	COMMITTEE	VOTE
NAT. RES.	11-0	W. & M.	23-0
Ayes:		Ayes:	
Nays:		Nays:	

DIGEST

Urgency statute. 2/3 vote required.

Current law, under the Warren-Alquist Act:

1) Makes the California Energy Commission (CEC) responsible for siting thermal powerplants of a size equal or greater than 50 megawatts (MW).

2) Exempts from CEC's regular 30-month siting process powerplants involving modifications to an existing facility, plus cogeneration, geothermal, research and demonstration projects, or thermal plants with a generating capacity of up to 100 megawatts. Such projects must be approved within 12 months from the filing of an application.

3) Does not generally require CEC approval for electric generating facilities that are not thermally powered, including wind, hydroelectric or solar photovoltaic facilities.

This bill:

1) Exempts "solar thermal powerplants" from CEC's regular siting process and requires such projects to be approved within 12 months from the filing of an application. This exemption applies regardless of the singular or "aggregated" electric generating capacity of the project.

2) Defines "solar thermal powerplant" to mean a powerplant in which 75% or more of the total energy output is from solar energy, with the use of backup fuels (such as oil, natural gas and coal) not exceeding 25% of the total energy input of the facility during any calendar year period.

FISCAL EFFECT

According to the Legislative Analyst, the bill could result in unknown, but potentially significant savings to the Energy Resources Programs Account from reduced solar thermal powerplant siting requirements.

- continued -

COMMENTS

1) According to the bill's sponsor, Luz International, Inc., its purpose bill is to save CEC and developers of solar powerplants time and money without losing any environmental or regulatory safeguards in the siting process. The bill does this by preventing CEC from considering the "aggregated" generating capacity of several adjacent solar thermal powerplants proposed by a single developer which might exceed the 100 MW threshold for siting under the commission's abbreviated 12-month application process.

2) Luz International, Inc., is currently in the process of developing multiple solar thermal electric generating projects east of Los Angeles in the desert areas of San Bernardino County. One of these projects consist of five 30 MW units of which three are already constructed and operating, one is under construction and one is in the planning stage. CEC reviewed the project for licensing because the five colocated units exceed 50 MW in net generating capacity. Units III through VII were certified by CEC on May 25, 1988.

3) Unit VIII of Luz SEGS will be an 80-megawatt power plant constructed near Harper Dry Lake in San Bernardino County. According to the commission, SEGS VIII is the first of five proposed SEGS units which will be located in the Harper Dry Lake area. If constructed, CEC indicates that SEGS Unit VIII will be the single largest solar powerplant in the world and comprise approximately 400 acres. When finished, the Luz SEGS complex at Harper Dry Lake will have an integrated or "aggregated" generating capacity exceeding 300 MW and occupy about 2,000 acres, or more than three square miles.

4) According to CEC, the technology used in the Luz SEGS projects involves parabolic reflectors that focus the sun's rays on evacuated tubes carrying a heat transfer fluid (HTF). The heat exchange unit is used to generate steam, which is then superheated in a supplementary gas-fired boiler. The superheated steam produces electric energy in a steam-turbine generator. HTF is considered toxic and past spills of this material by Luz SEGS have required clean-up measures supervised by the Department of Health Services.

   CEC also indicates that the Luz SEGS solar energy powerplant projects involve major issues affecting air quality, biological resources, water supply, energy demand conformance, electrical transmission systems planning, hazardous waste and cumulative environmental impacts. Luz SEGS Units III through VII have required relocation of desert tortoises.

Jeff Shellito
445-9367
8/23/88:anatres

ROSENTHAL FLOOR STATEMENT ON SB 928 (ROGERS)

ENVIRONMENTAL CONCERN

I RISE TO SEEK CLARIFICATION FROM THE AUTHOR ON SB 928.

WHEN THIS BILL CAME BEFORE THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE, IT WAS SIMPLY A TECHNICAL CONSENT ITEM WHICH CLARIFIED THE DEFINITION OF "THERMAL POWERPLANT."

HOWEVER, THE BILL WAS SUBSTANTIALLY AMENDED IN THE ASSEMBLY TO INCLUDE PROVISIONS TO EXPEDITE THE SITING OF SOLAR THERMAL POWERPLANTS.

FROM A PROCEDURAL BASIS, I AM CONCERNED THAT THIS EXPANDED BILL WAS NOT REVIEWED BY MY COMMITTEE. FROM A POLICY PERSPECTIVE, I AM CONCERNED THAT THE BILL DOES NOT INCLUDE AN AMENDMENT RECOMMENDED BY THE ENERGY COMMISSION REQUIRING SOLAR APPLICANTS TO PROVIDE AN ANALYSIS OF ALTERNATIVE SITES.

SOLAR POWERPLANTS ARE MUCH MORE LAND-USE INTENSIVE THAN OTHER PLANTS. A TYPICAL 80 MEGAWATT PLANT REQUIRES APPROXIMATELY 400 ACRES--THIS IS ALMOST 1 SQUARE MILE OF LAND. THESE PLANTS OFTEN HAVE SIGNIFICANT AIR AND WATER QUALITY IMPACTS. AN ANALYSIS OF ALTERNATIVE SITES IS NEEDED TO MAKE CERTAIN THAT THESE ADVERSE ENVIRONMENTAL IMPACTS ARE MITIGATED.

IN THE ASSEMBLY, THE SPONSOR OF THE BILL SUCCESSFULLY OPPOSED THE ENERGY COMMISSION'S PROPOSED AMENDMENT ON ALTERNATIVE SITES. NOW THE ENERGY COMMISSION SUPPORTS THE BILL WITH THE UNDERSTANDING THAT THE SPONSOR WILL COMPLY WITH COMMISSION REGULATIONS REQUIRING ALTERNATIVE SITE ANALYSES.

FOR THE RECORD, DO YOU AND YOUR SPONSOR AGREE THAT THE ENERGY COMMISSION HAS THE REGULATORY AUTHORITY TO REQUIRE SUCH ANALYSES. IF THE ANSWER IS YES, I HAVE NO CONCERN WITH THE BILL. IF THE ANSWER IS NO, THEN I REQUEST THAT YOU ADOPT AN AMENDMENT AS

LABOR CONCERN

I ALSO HAVE ONE MORE CONCERN ABOUT THE BILL.

THIS BILL WILL MAKE IT EASIER FOR THE SOLAR INDUSTRY TO CONSTRUCT PROJECTS IN CALIFORNIA--AND THAT PLEASES ME.

HOWEVER I HAVE RECEIVED COMPLAINTS FROM LABOR GROUPS THAT NEW SOLAR PROJECTS ARE BEING CONSTRUCTED BY OUT-OF-STATE WORKERS--AND THAT DISPLEASES ME.

ONE OF THE PURPOSES OF BUILDING NEW POWER PLANTS IN CALIFORNIA IS TO PROMOTE ECONOMIC DEVELOPMENT AND LOCAL EMPLOYMENT.

I AM SUPPORTING THIS BILL WITH THE UNDERSTANDING THAT THE SPONSOR OF THE BILL IS NEGOTIATING WITH LABOR GROUPS TO ENSURE THAT CALIFORNIA WORKERS BENEFIT FROM THE DEVELOPMENT OF SOLAR POWER.

STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

CALIFORNIA ENERGY COMMISSION
CHARLES R. IMBRECHT
Chairman

August 1, 1988

The Honorable John Vasconcellos
Chairman, Assembly Ways & Means
State Capitol, Room 6026
Sacramento, California 95814

Dear Assemblyman Vasconcellos:

The California Energy Commission (CEC) has taken a SUPPORT position on SB 928 (Rogers) as proposed to be amended by Senator Rogers at the Assembly Natural Resources Committee Hearing on June 27, 1988. This bill will exempt solar power plants (75 percent of total energy input must be from solar sources) from the Notice Of Intention (NOI) and would make them eligible for a 12-month Application For Certification (APC). SB 928 is scheduled to be heard in the Assembly Ways and Means Committee on Wednesday, August 10, 1988.

SB 928 would add Section 25140 to the Public Resources Code defining a "solar thermal powerplant" as any thermal power plant which utilizes solar energy for 75 percent or more of its energy input. The Energy Commission agrees that California law should incorporate the federal restrictions on solar power plants.

We also agree that subject to a 300 MW size limitation, as proposed in the amendment to Section 25540.6(a), solar power plants should be exempt from the NOI process. However, because of the large amount of land required for solar facilities, the Energy Commission will continue to use Section 1765 of its siting regulations (Title 20, California Code of Regulations) to ensure that alternative sites have been adequately considered.

Again, the CEC SUPPORTS SB 928 (Rogers) and urges the members of the Assembly Ways and Means Committee to do the same.

Sincerely,

CHARLES R. IMBRECHT
Chairman

cc: Senator Don Rogers
Members, Assembly Ways and Means